

2:21-cv-01676-APG-VCF - Friday, November 4, 2022

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10 | REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 THE HONORABLE ANDREW P. GORDON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES: (See next page.)

15 REPORTED BY: PAIGE M. CHRISTIAN, RPR, CRR, CCR #955
16 United States District Court
333 South Las Vegas Boulevard
Las Vegas, Nevada 89101

22 Proceedings reported by machine shorthand.
Transcript produced by computer-aided transcription.

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1 APPEARANCES:**2 For Plaintiffs:****4 JASON D. GUINASSO, ESQ.**
5 HUTCHISON & STEFFEN, PLLC
5371 Kietzke Lane
Reno, NV 89511
(775) 853-8746
E-mail: jguinasso@hutchlegal.com**7 --AND--****8 CHRISTEN M. PRICE, ESQ. (Pro Hac Vice)**
9 1201 F Street NW
Suite 200
10 Washington, DC 20004
(202) 393-7245
11 E-mail: cprice@ncoselaw.org**12 --AND--****13 PETER GENTALA, ESQ. (Pro Hac Vice)**
14 1201 F Street NW
Suite 200
15 Washington, DC 20004
(202) 393-7245
16 E-mail: pgentala@ncoselaw.org**17 For Defendants Steve Sisolak and Aaron Ford:****18 SABRENA CLINTON, ESQ.**
19 NEVADA OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue
Suite 3900
20 Las Vegas, NV 89101
(702) 486-5708
21 E-mail: sclinton@ag.nv.gov**22 ///**

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1 **APPEARANCES CONTINUED:**

2

3 For Defendant Clark County:

4

JOEL K. BROWNING, ESQ.*DISTRICT ATTORNEY'S OFFICE*

5

500 S. Grand Central Parkway

6

Suite 200

7

Las Vegas, NV 89155

(702) 455-4761

E-mail: joel.browning@clarkcountyda.com

8

--AND--

9

BRANDON M. THOMPSON, ESQ.*DISTRICT ATTORNEY'S OFFICE*

10

500 S. Grand Central Parkway

11

Suite 200

12

Las Vegas, NV 89155

(702) 455-4761

E-mail: brandon.thompson@clarkcountyda.com

13

For Defendant Nye County:

14

BRENT L. RYMAN, ESQ.*ERICKSON, THORPE & SWAINSTON, LTD.*

15

1885 South Arlington Avenue

16

Suite 205

17

Reno, NV 89509

(775) 786-3930

18

E-mail: bryman@etsreno.com

19

20

21

22

23

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1 LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 4, 2022; 9:03 A.M.

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3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** Angela Williams, et al.,
5 vs. Steve Sisolak, et al., 21-cv-01676-APG-VCF.6 Counsel, please make your appearances, starting with
7 the plaintiffs.8 **MS. PRICE:** Christen Price, Your Honor, together
9 with --10 (Whereupon, the reporter interrupts to preserve the
11 record.)12 **THE COURT:** Speak into the microphone. There we go.13 **MS. PRICE:** Christen Price for the plaintiffs
14 together with my colleagues, Jason Guinasso and Peter Gentala,
15 all on behalf of the plaintiffs.16 **THE COURT:** Good morning to all of you.17 **MR. THOMPSON:** Brent Thompson, Your Honor, with
18 government defendants with my associates --19 **MR. BROWNING:** Joel Browning on behalf of Clark
20 County, Your Honor.21 **MS. CLINTON:** Sabrena Clinton on behalf of Governor
22 Sisolak and AG Ford.23 **MR. RYMAN:** Good morning, Your Honor. Brent Ryman on
24 behalf of Nye County --25 **THE COURT:** Thank you. Good morning to all of you.

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1 There are two motions on this case. There is a
2 motion for interlocutory appeal that was filed by plaintiff, and
3 the government defendants have moved for entry of final judgment.

4 It seems to me that from a practical standpoint,
5 everybody's on the same page. There ought to be an immediate
6 appeal. The question is how to go about the mechanism.

7 Is that correct? Do the plaintiffs agree to that?

8 **MS. PRICE:** Yes, Your Honor.

9 **THE COURT:** And the defense?

10 **MR. THOMPSON:** Yes, Your Honor.

11 **THE COURT:** All right. And plaintiffs prefer to
12 proceed with the appeal but would prefer a setting of the rest of
13 the action against the remaining defendants while the appeal is
14 pending; is that right?

15 **MS. PRICE:** That's correct, Your Honor.

16 **THE COURT:** All right. And the government defendants
17 don't really care what happens in the underlying case while it's
18 on appeal because you're out of the case; is that correct?

19 **MR. THOMPSON:** That is correct.

20 **THE COURT:** All right. So my real focus this morning
21 is on, why does it matter which mechanism we use for the appeal?

22 So with that being said, I'll ask the plaintiff if
23 you can go ahead and argue and focus in on that issue.

24 **MS. PRICE:** Thank you, Your Honor. And may it please
25 the Court.

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1 Is there a way I can reserve two minutes of my time
2 for rebuttal?

3 **THE COURT:** Sure. I'm not going to be real sickly
4 about time, so just jump in.

5 **MS. PRICE:** Okay. Thank you, Your Honor.

6 **THE COURT:** I think you might want to point the
7 microphone down just a little bit or pull it closer to you. You
8 might not -- there you go. Thank you.

9 **MS. PRICE:** Thank you. This case is about an
10 ecosystem where slavery thrives. Private and public actors have
11 cultivated and enabled an environment hospitable to sexual abuse
12 for profit in which my clients were sex trafficked by legal
13 licensed businesses. So the government defendants eager to
14 remove themselves, have --

15 *(Whereupon, the reporter interrupts to preserve the
16 record.)*

17 **THE COURT:** Slow down because we're having problems
18 with the audio.

19 **MS. PRICE:** Sorry about that.

20 **THE COURT:** That's okay.

21 **MS. PRICE:** In a case about systemic laws, plaintiffs
22 should be allowed to bring a case against the system and so seek
23 two things: Permission to appeal, but also to not have the case
24 broken up before they have a chance to -- so to Your Honor's
25 question about why defendants would prefer the certification, we

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1 are concerned with the case becoming severable as a result of
2 final judgment being entered specifically with respect to the
3 efficiency point in the sense that if the case were to proceed to
4 final judgment and then as to Sapphire and Chicken Ranch,
5 discovery were to proceed, there would be potentially a need for
6 duplication and redo of discovery if the Ninth Circuit were to
7 take the appeal, would reverse, government defendants are back in
8 the case.

9 Just to give an example, with respect to Nye County,
10 plaintiffs would be seeking information on their licensing
11 process for both the women at the brothel, but the brothel
12 itself. And that would implicate communications with Nye County
13 and interactions with the County, which the defendants could
14 object to on relevance grounds or something like that. We could
15 end up back here before you in a discovery dispute, but also, if
16 there's a reversal by the Ninth Circuit, we would have to
17 basically redo that discovery and ask those questions of both Nye
18 County and Chicken Ranch --

19 **THE COURT:** If I -- if I enter judgment and don't
20 stay the underlying case, in theory, you could still conduct
21 discovery against the government entities, either treat them as
22 parties and use Rule 26 for depositions and things like that or
23 Rule 45 for subpoenas for depositions for a nonparty.

24 I suppose, it's a little more difficult if they're
25 considered nonparties to get interrogatories, requests for

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1 admissions, and the like as nonparties. But certainly, Rule 45,
2 subpoenas duces tecum, things like that, allow you to get
3 discovery from them.

4 So from a practical standpoint, are you that much
5 injured if discovery proceeds?

6 **MS. PRICE:** Yes, Your Honor. I think the concern is
7 that there would be much more to dispute about, and so, there
8 would be an inefficiency kind of built in there. And there isn't
9 really an injury to the plaintiffs in having the whole thing
10 stayed and be able to take potentially all of the discovery
11 together, particularly because the plaintiffs allege that the
12 defendants have reenforced indemnity to each other and it's in a
13 systemic way. And so, we don't want the case to be viewed in
14 fragments because it's really about an ecosystem.

15 **THE COURT:** Your motion implies but doesn't
16 specifically come out and request a stay. If I grant it under
17 1292(b), do you -- I think I have the inherent power to stay the
18 case down below.

19 Is that what you want if I grant 1292(b)?

20 **MS. PRICE:** Yes, Your Honor. If you grant the
21 1292(b) certification, plaintiffs would want a stay of the full
22 case.

23 **THE COURT:** Okay. So then, the next step
24 becomes -- I'm a little concerned that the motion itself doesn't
25 come right out and say, We want a stay.

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1 So my concern is that the remaining defendants --
2 Sapphire, the brothels, the strip clubs -- are on notice of that,
3 so my thought is we'd have to have another motion for stay at
4 that point so they could chime in, at least, and give them due
5 process to be heard.

6 **MS. PRICE:** Yes. And plaintiffs would be happy and
7 would intend to move for a stay if the 1292(b) certification is
8 granted. We prefer that.

9 **THE COURT:** Okay. All right. I didn't mean to cut
10 you off.

11 Anything further?

12 Go ahead.

13 **MS. PRICE:** Plaintiffs also would just note that the
14 Ninth Circuit has found final judgment entry to be premature
15 where the claims were inherently inseverable, both legally and
16 factually, for claims that remain in a case if there weren't a
17 mutual compelling circumstance to justify and recommend entry.
18 And here, sex trafficking survivors have alleged that a
19 highly-connected group of defendants are reenforcing and enabling
20 each other, and so, a just reason going back to the 54(b) factors
21 for delaying final judgment is --

22 *(Whereupon, the reporter interrupts to preserve the
23 record.)*

24 **MS. PRICE:** Sorry about that. Here, sex trafficking
25 survivors have alleged a highly-connected group of defendants is

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1 reenforcing and enabling each other. Thus, a just reason for
2 delaying entry of final judgment is that we don't want parties
3 alleged to have commuted to be hermetically sealed off from each
4 other.

5 **THE COURT:** If -- if I grant 54(b) certification as
6 to defendants -- the government defendants' request and stay the
7 case, can you live with that?

8 **MS. PRICE:** Yes, Your Honor. As long as the case
9 isn't being severed, the plaintiffs can -- can live with that.

10 **THE COURT:** All right. And if I grant -- back -- to
11 circle back to the question I asked before, if I grant 54(b), can
12 I stay the case now, or do we think we still need to have another
13 motion to stay so that the remaining defendants can be heard?

14 I just don't recall off the top of my head if
15 the -- if the 54(b) motion included a request to stay.

16 **MS. PRICE:** I'm not certain off the top of my head,
17 Your Honor, but we'd be happy to brief it.

18 **THE COURT:** Okay. All right. We'll look at that
19 issue another day.

20 Okay. Anything further?

21 **MS. PRICE:** Just to close, Your Honor, standing is a
22 controllable question of law. Every defendant where there are
23 multiple players in this ecosystem remain in the case. As it
24 relates to the 13th Amendment and the Trafficking Victims
25 Protection Act, this is an issue of first impression and have

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1 extraordinary importance to women's rights, to which the Ninth
2 Circuit has already (indiscernible) and a case about systemic
3 (indiscernible). We want to be able to bring the case against
4 the systems, so accordingly, plaintiffs ask the Court permission
5 to appeal.

6 **THE COURT:** Thank you.

7 **MS. PRICE:** Thank you, Your Honor.

8 **THE COURT:** All right. For the defense.

9 **MR. THOMPSON:** Thank you, Your Honor. And I'd also
10 like to reserve time for rebuttal.

11 The Court has honed in on the purpose of this hearing
12 today. It's not for the immediate vindication of plaintiffs'
13 rights with the allegations. It's not to address any underlying
14 allegations or challenges to the systemic profits of legalized
15 prostitution nor is the ability to appeal right now.

16 As the Court mentioned, we're just trying to
17 determine the appropriate vehicle for appeal and the parties'
18 status going forward from there.

19 So our position is that section 20 -- I'm sorry,
20 1292(b) motion to stay is improper. The Court noticed the stay
21 issue. You mentioned that several times. And I think that was
22 the main concern here is that it sort of defeats the ability of
23 the plaintiffs to vindicate the right against the other
24 defendants. A stay here would completely halt all arguments and
25 procedure in this case.

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1 It's -- they mention that the -- I'm sorry, that the
2 defendants are inseverable. However, the allegations made
3 against the government defendants, the strategy and the discovery
4 needed do not require them to be in the case currently. It does
5 not require them to be argued with the other defendants.

6 So in order to grant a 1292(b) motion, the plaintiffs
7 would need to prove that there's a controlling question of law
8 (indiscernible) and they can -- advance the ultimate
9 determination of this litigation. This is an and, not an or.

10 The plaintiffs in their motion spent a lot of time in
11 the first two, but they very rarely address the third question.
12 And in -- as I mentioned before, the stay itself automatically
13 defeats that. It defeats advancing this litigation. This stays
14 their proceedings against the other defendants as well as they're
15 requesting to stay and appeal in order to add parties back in.
16 That's going to expand. It's not going to --

17 **THE COURT:** But do you care about a stay if you're on
18 appeal even if I grant 54(b), as you're requesting?

19 **MR. THOMPSON:** If 54(b) is granted, then the parties
20 are substantially out of the question unless the unfortunate
21 happens and they reverse, but --

22 **THE COURT:** Well, then that leads to the point that's
23 the plaintiff's concern that if they're, quote/unquote, out of
24 the case on appeal and discovery is not stayed, they have
25 difficulty obtaining information from your clients. As I

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1 suggested, Rule 45 exists to allow subpoena duces tecum and the
2 like, but they wouldn't -- I guess that's the point, whether they
3 would be able to use Rule 33 for interrogatories, Rule 26 for
4 depositions, things like that.

5 **MR. THOMPSON:** Correct. And I'd also note that
6 there's 30(b)(6) deponents would be available even as nonparties,
7 so they'd have that available to them.

8 Again, I think their ability to obtain discovery,
9 whatever they need for government defendants would not be harmed
10 by granting 54(b) and then being out of the case.

11 They've also stated the controlling question of law
12 regarding the issue of standing under the 13th Amendment. And
13 it's been held -- the question of law which the Court ruled on
14 and has considered the facts are not controlling questions. They
15 didn't address, though, how far that --

16 **THE COURT:** Well, why is it a standing and
17 controlling question here with regard to your clients?

18 **MR. THOMPSON:** They're trying to determine whether or
19 not --

20 **THE COURT:** That's where the compelling issue, in a
21 sense, with standing.

22 **MR. THOMPSON:** Okay.

23 **THE COURT:** Standing is one of the significant and
24 compelling issues here.

25 Why is that a controlling question that the Ninth

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1 Circuit would say, Okay. Let's take it up?

2 **MR. THOMPSON:** Well, the standing would determine
3 whether or not the defendants stay in the case or not. That's
4 their point.

5 **THE COURT:** Wouldn't that materially affect the
6 outcome of litigation, then, and therefore, it's sufficient for
7 appeal? Or perhaps I'm misinterpreting --

8 **MR. THOMPSON:** I think it would affect the outcome of
9 the litigation materially, I guess, is an argument. But there is
10 the concern that these can go separately, as well. They're not
11 so much interconnected that the Court ruled on that would require
12 the defendants to stay in.

13 **THE COURT:** I understand. Thank you.

14 **MR. THOMPSON:** Moving into the 54(b) aspect of it,
15 we've already established there's multiple parties here, and
16 there's multiple claims, so we have that problem there of more
17 than one claim for relief for multiple parties involved. The
18 Court has made a final judgment on all the defendants, so we have
19 that. The only concern here is if there's any just reason for
20 delay. And we established there's no reason to delay entering a
21 final judgment because it would not hamper the plaintiffs
22 pursuing not only their defendants, the sex industry defendants,
23 but if they reverse, then they can still come back and deal with
24 the government defendants.

25 **THE COURT:** Doesn't that create inefficient

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1 litigation, though, if I don't stay the underlying case? because
2 they'll have to repeat -- I guess, in theory, if they take
3 depositions while your clients are on appeal, and then for some
4 reason, they get reversed and it comes back down, arguably, you
5 get to retake those depositions because you were parties to
6 those, things like that.

7 So doesn't that create inefficiencies if I don't stay
8 the underlying litigation?

9 **MR. THOMPSON:** I would -- I guess, it's a
10 possibility. Maybe not inefficient, but it might cause a
11 negligible delay, but I don't think it's inefficient delay.

12 **THE COURT:** Okay.

13 **MR. THOMPSON:** And if Your Honor has no other
14 questions, I'll submit --

15 **THE COURT:** You addressed it. Thank you, sir.

16 All right. Any final rebuttal from the plaintiffs?

17 Since there's two motions, I'll go back to the
18 defendant for final words.

19 **MS. PRICE:** Yes. And thank you, Your Honor. Just
20 wanted to clarify one point with respect to authority and what I
21 think the defendants were arguing and -- as to the
22 mixed -- potential mixed question of fact of law under the
23 question of law prong, which is simply that standing is treated
24 as a question of law even when there is some factual analysis due
25 to the fact that injuries are being analyzed. The Ninth Circuit

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1 has held --

2 (Whereupon, the reporter interrupts to preserve the
3 record.)

4 **MS. PRICE:** Including in *Barnhart v. County of Los
5 Angeles* in 2002.

6 And then with respect to the efficiency point, it
7 seems that the defendants have more or less admitted that there
8 would be an inefficiency in not staying the case, severing, and
9 continuing with multiple cases with respect to the point
10 plaintiffs have made about it being an ecosystem and
11 inefficiencies inherent in combining the cases back together.

12 So unless Your Honor has any further questions,
13 that's all from the plaintiffs.

14 **THE COURT:** I had one follow-up question I forgot to
15 ask both of you in the first part, and it's unrelated, in a
16 sense, to the present motion. But there were two motions for
17 protective order that were filed, ECF No. 2 and ECF No. 50.
18 Magistrate Judge Ferenbach administratively closed those two
19 motions without ruling on them pending resolution of the motions
20 that I was considering back in the day.

21 Now that I've ruled on those, those two motions, in a
22 sense, reignite. My recollection is these were two motions to
23 keep the plaintiffs' names as Doe --

24 **MS. PRICE:** Yes, Your Honor.

25 **THE COURT:** -- I guess, the question now becomes now

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1 that those dispositive motions have been ruled upon, what do we
2 want to do with those motions for protective order? Since it's
3 going up on appeal, if I stay the case, do we want to keep those
4 motions administratively closed until it comes back, or what's
5 your thought?

6 **MS. PRICE:** Yes, Your Honor. The plaintiffs would
7 prefer for the motions to remain administratively closed for as
8 long as the case is stayed.

9 **THE COURT:** Is on appeal, at least --

10 **MS. PRICE:** Or is on appeal. Yes.

11 **THE COURT:** All right. Thank you for that.

12 All right. Anything else from the defense?

13 And if you'll address that issue, as well, as far as
14 closing the case -- or those motions, I meant.

15 **MR. THOMPSON:** Thank you, Your Honor. Regarding
16 the -- those motions, we have no objection to closing that.

17 I do just want to mention the defendants are not
18 opposed to a stay. We still argue that the 54(b) vehicle is the
19 proper vehicle.

20 We would address the plaintiffs' arguments regarding
21 systemic -- or a system within -- regarding their allegations.
22 Other than that, no allegations are proof -- proof have been
23 provided -- there's not factual allegations as to Clark County,
24 and Nye County is a different jurisdiction with different laws
25 that are not applicable there.

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1 One minor thing I would just mention the plaintiffs
2 rely on the *Morris* (*indiscernible*) case for the intertwined
3 nature of the claims. And I would just note that the Court's own
4 analysis mentions that these parties were separately trafficked.
5 Their positions were separate from each other and they're
6 distinct. So it's an analysis that was already brought up in
7 submission and ruled on by the Court that substantiates the lack
8 of interconnection between all the parties.

9 And if the Court has no further questions, I will
10 submit on that.

11 **THE COURT:** Let me check my notes. I think you
12 picked up on -- got it. Thank you, sir.

13 (Pause.)

14 **THE COURT:** All right. I guess I'm going to rule on
15 this. Frankly, it's one of the easier ones I get to do because
16 the parties are mostly in agreement on what needs to happen from
17 a practical standpoint. It's just a question of which mechanism
18 is the proper way to go about it.

19 I'm going to rule. I'm going to deny the plaintiffs'
20 motion and grant the defendants' motion under Rule 54(b). I
21 think that's the more proper vehicle on which to take this up on
22 appeal. My July 2022 order was a final order dismissing all of
23 the claims against the government defendants with prejudice, so
24 that's properly under 54(b).

25 But let me make a note for purposes of appeal that

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1 under 28 U.S.C. 1292(b), which is the preferred mechanism for the
2 plaintiffs, I can certify and I'll enter a final order for
3 interlocutory appeal if the order does three things. One, it
4 involves a controlling question of law as to which there's
5 substantial ground for difference of opinion, and an immediate
6 appeal from the order may materially advance the ultimate
7 determination of litigation. Those are the three factors I have
8 to look at.

9 The plaintiffs bear the burden of establishing all
10 three of those because they're the movant, and the Ninth Circuit
11 has held several times that certification under 1292(b) is for
12 exceptional situations, not just difficult rulings in hard cases.
13 So the standard is fairly high.

14 I think the plaintiffs have established that the
15 standing issue in this case is a controlling question of law
16 because its resolution could materially affect the outcome of the
17 case, and immediate appeal may also materially advance interest
18 of the parties because an early answer to the same question and
19 whether the defendants could -- I'll just say the government
20 found to be held liable will materially advance the case.

21 Where I am troubled is I don't think the plaintiffs
22 have established that there are substantial grounds for
23 difference of opinion on whether they possibly alleged foundation
24 for standing. I've ruled that way against the plaintiffs on that
25 issue.

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1 I -- and my order did not eliminate the possibility
2 of (indiscernible) liability for government defendants, but I
3 found that the plaintiffs have not alleged a close enough
4 connection in this case. The beneficiary on liability cases that
5 plaintiffs cite to consistently have a closer connection between
6 the plaintiff and the defendants that have been alleged here.

7 The plaintiffs also in their moving papers reiterate
8 their arguments that (indiscernible) standing. But simply a
9 strong disagreement with the Court ruling is not sufficient for
10 there to be substantial ground for a difference of opinion under
11 the Ninth Circuit case law.

12 So that's why I think the proper vehicle is under
13 54(b) because I have entered a final judgment against these
14 defendants on which there's no just reason for delay, and an
15 appeal will address the needs of the parties going forward.

16 While there is some risk of inefficiencies of
17 proceeding with an appeal at this time, I think the present needs
18 of the parties, the need for resolution of this issue, and the
19 ability to stay the case down below pending appeal address those
20 concerns about the inefficiencies.

21 So I'm going to grant the 54(b) motion, deny the
22 plaintiffs' motion to stay (indiscernible) go up on appeal to the
23 Ninth Circuit. As I mentioned, I think, technically, I'm not
24 comfortable granting a stay right now because I'm concerned that
25 the -- well, let me think about it for a minute.

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1 I'll go about it this way. I'm going to grant a stay
2 of the underlying case that remains against the remaining
3 defendants under my inherent power. If the defendants who remain
4 in the case want to proceed with the litigation, they can file a
5 motion for reconsideration. I think your motion teed it up. The
6 plaintiffs' motion teed it up. It didn't specifically request
7 it, but there's enough in that, that I got that you were looking
8 for a stay. And so, maybe the most efficient way is I'm going to
9 stay the underlying litigation right now, and defendants can move
10 for reconsideration if they think there's a reason for the case
11 to go forward. So I think that gets everybody where they want to
12 be on appeal with the Ninth Circuit if I stay the case down
13 below.

14 Any questions or things I need to modify in that
15 regard.

16 For the plaintiffs?

17 **MS. PRICE:** Nothing from the plaintiffs, Your Honor.

18 **THE COURT:** All right. Anything from the defense?

19 **MR. THOMPSON:** No, Your Honor.

20 **THE COURT:** All right. That will be my order, then.
21 I'm not going to enter a separate order. The minutes here and
22 the transcript will constitute my order. Thank you all. Well
23 argued. Thank you.

24 *(Proceedings adjourned at 9:30 a.m.)*

25 --00--

